

The 19th June, 1986

No. 9/8/86-Lab./4733.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the Workman and the Management of M/s. Nibro Limited, Delhi Road, Gurgaon.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 298 of 1985.

between

SHRI MAHENDER KUMAR, WORKMAN AND
THE RESPONDENT-MANAGEMENT OF M/S.
NIBRO LIMITED, DELHI ROAD,
GURGAON.

Present:

Shri Raghbir Singh, for the workman.

Shri M. P. Gupta, for the respondent-
management.

AWARD

This industrial dispute between the workman Shri Mahender Kumar and the respondent-management of M/s. Nibro Limited, Delhi Road, Gurgaon, has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order ID/FD/31-85/22112-16, dated 22nd May, 1985 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Mahender Kumar was justified and in order? If not to what relief is he entitled?

According to the claim statement, the workman was Executive Member of the Nibro Employees Association. The management framed the baseless charge-sheet so that the trade union activities of the union could be wounded up. In the enquiry no opportunity was granted of being represented. The workman was not allowed to be represented by Shri Darshan Singh or Shri Prithvi Singh, Advocate. The enquiry officer did not listen the workman. The evidence lead by

the workman is not on record. The statement of the workman is not on record. Enquiry Officer in collusions with the management, gave false findings. The workman has maritorous record. He has been victimised due to trade union activities. The charge-sheet was not issued by the authorised person. Hence the workman has prayed to be reinstated with full back wages and continuity of service.

The claim of the workman has been contested by the management. Objection is taken that the reference is bad. That the claim statement is vague. It is contended that the charge-sheet was genuine and bona fide. It is denied that he was charge-sheeted because of his union activities. It is further contended that the request of the workman to be represented by Shri Prithvi Singh or by Shri Darshan Singh was not granted in accordance with the standing order of the company. Previously one Shri S. C. Chopra was appointed as enquiry officer but in view of objection of the workman, Shri Wadehra was appointed as enquiry officer. It is further stated that the enquiry was fair and proper. The workmen was directed to produce his evidence but he did not produce his witness. Other averments are also denied.

The workman has filed the rejoinder denying the averments raised by the management. The reference was contested on the following issues:—

(1) Whether the enquiry was fair and proper?

(2) As per reference?

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issues are as under:—

ISSUE No. 1:

The first objection raised by the authorised representative of the workman is that he was not allowed to be represented by Shri Darshan Singh or Shri Prithvi Singh Yadav, Advocate. It has been admitted by the enquiry officer Shri Wadehra that the workman was not allowed to be represented by these two persons as there was no such provision in the standing orders. According to rule 254(a) at page 12 of the standing orders of the company, the workman may be assisted by any other workman of choice of the workman. Shri Prithvi Singh was an advocate and Shri Darshan Singh was not a workman of the factory. Hence the workman was not allowed to be represented by these two persons. The workman did not take help of any workman to be represented. The representative of the workman has relied upon the judgement of Bombay

High Court in Ghatge Patil Transport Pvt. Ltd. vs. B. K. Etale and others, 1984-II-LLJ-page 121. In this case the delinquent workman was pitted against the legally trained mind and it was held that refusal to grant permission to appear through legal practitioner would amount to denial of justice and essential principles of natural justice would be violated. In the present case, the management was represented by Shri Ravi Verma. There was no evidence that he was a legally trained person. Hence it cannot be said that the rules of natural justice were violated by not allowing the representation by Shri Prithvi Singh Yadav and Shri Darshan Singh. It is contended that the charge-sheet is dated 8th October, 1984, whereas the notice was issued to him regarding the charge-sheet dated 26th October, 1984. The enquiry officer was also appointed for charge-sheet, dated 26th October, 1984. Hence no proper enquiry was conducted. The workman has admitted that enquiry was conducted regarding the charge-sheet dated 8th October, 1984. It is only a clerical mistake that the date as 26th October, 1984, has been mentioned in some documents instead of 8th October, 1984, whereas in fact it related to charge-sheet dated 8th October, 1984. Objection is taken that according to charge-sheet the workman misbehaved with Shri Man Singh and Harish Dhawan, but both the witnesses were not examined in the enquiry. Hence the charge-sheet does not stand proved. This contention of the representative of the workman has no force, because Abdul Slam, Supervisor has appeared. He had called Shri Man Singh and Shri Harish Dhawan to explain some defect and the workman had misbehaved in his presence. Shri Abdul Slam has not been cross-examined by the workman. It shows that his evidence is unrebutted and there is no reason to disbelieve him. Moreover in the second offence of the same day, the workman had misbehaved with Shri Abdul Slam. The next contention of the representative of the workman is that the enquiry report must be speaking order. Reliance has been placed on the judgement of Hon'ble Supreme Court of India in Anil Kumar vs. Labour Court, Jullundur, FJR-Vol. 67, page 85. I had perused the enquiry report Ex. M-8. The statement of Shri Abdul Slam has been clearly dismissed and there is no other evidence to be discussed and it cannot be said that it is not a speaking order. It is contended that mention has been given of a particular abuse, whereas Shri Abdul Slam has not repeated that abuse in his statement. This mistake does not prove that the enquiry officer did not apply his mind. This abuse is mentioned in the

charge-sheet. Hence it is a bona fide mistake. It is contended that according to the rule 25-4(g) of the standing order the previous record of the workman should have been considered before dismissing him. In my opinion this was not the mandatory to consider the previous record before dismissing workman. It is correct that his previous record could be seen before taking action. In view of the above arguments. I find that the enquiry was fair and proper and no prejudice has been caused to the workman.

ISSUE No. 2:

It is contended that according to the charge-sheet Ex. M-2, the mistake was not so grave that the workman should have been punished with extreme punishment of dismissal. According to the charge-sheet, at 8.35 a.m. on 6th October, 1984, the workman along with other 12 persons came in the Cutting Deptt., where Shri Harish Dhawan and Shri Man Singh have been called by Shri Abdul Slam for checking. The workman abused Shri Harish Dhawan and Shri Man Singh and said that they did not want to see their faces and in the second incident on the same day at 3.00 p.m., that they abused Shri Abdul Slam when he was coming from office. The representative of the management has, relied upon rules 17 and 19 of the standing orders. According to rule 17 it is major misconduct and according to rule 19 the workman interfering the work of other workman is a misconduct. He has further contended that in one case the workman blew a whistle called upon the workman to stop work and the Supreme Court has held his dismissal as valid. In this case, the workman did not prevent Shri Man Singh and Harish Dhawan from performing duty. He had abused them and said that he did not want to see their faces. No reason has been given and it was not mentioned in the charge-sheet that it was done to prevent them to perform duty. Hence the charges were not serious as to invite them with the extreme punishment of dismissal. Reliance has been placed on the judgement of Hon'ble Supreme Court in Rama Kant Mishra vs. State of U.P. 1983-FJR-Vol. 62, page 100 it has been held that where the misconduct of the workman consisting of use of abusive and threatening language towards another workman, accused workman having 14 years unblemished service and not resorting to any positive action subsequently, it was held that dismissal would be unjustified. The punishment was substituted by withholding two increments. In view of the above-said judgment, the punishment of dismissal in the present case is illegal and unjustified. There is no evidence of the previous misconduct of the workman. In the present case, the mistake

of the workman is slightly grave because of subsequent misconduct with Shri Abdul Slam. Hence I feel that ends of justice will be met if the workman is reinstated with continuity of service but with half back wages. The award is given accordingly.

Dated, the 4th April, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1260, dated the 17th May, 1986

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

The 2nd July, 1986

No. 9/8/86-6Lab./4918.—In pursuance of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between workman and the management of M/s Tirupati Udyog, Pvt. Ltd., 15 Mile Stone, Mathura Road, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER,
LABOUR COURT, FARIDABAD

Reference No. 348 of 1985

between

SHRI RAM SUNDER, WORKMAN AND
THE RESPONDENT-MANAGEMENT
OF M/S. TIRUPATI UDYOG PVT.
LTD., 15. MILE STONE, MATHURA
ROAD, FARIDABAD

Present:

Shri S. C. Srivastava for the workman.

Shri Jagbir Bhadana for the respondent-management.

AWARD

This industrial dispute between the workman Shri Ram Sunder and the respondent-management of M/s. Tirupati Udyog, Pvt. Ltd., 15, Mile Stone, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana.—vide his order No. 1D/FD/130-85/28716—21, dated 10th July, 1985, under Section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Ram Sunder was justified and in order? If not, to what relief is he entitled?

According to the demand notice and claim-statement, he was appointed as a Helper on 23rd January, 1981. On 27th December, 1984, he was issued a false charge-sheet which was replied on 29th December, 1984. Enquiry was ordered,—vide letter, dated 4th January, 1985 and Shri Jagbir Bhadana a legal advisor of the management was appointed as Enquiry Officer. 5th January, 1985 was fixed a date of enquiry. On 11th January, 1985, the workman demanded some facilities but he was turned out from the enquiry proceedings. He wrote a letter to the Enquiry Officer on 2nd February, 1985 for turning him out from the proceedings and protested that the enquiry should be held outside the factory, but he did not receive any reply. It is said that the enquiry was only a DRAMA. On 20th February, 1985 a show-cause notice was received from the management without any enquiry report. This letter was replied on 22nd February, 1985. On 30th March, 1985, the services of the workman were terminated. The workman has prayed for reinstatement with continuity of service and with full back wages.

The management has contested the claim of the workman. Objections are taken that no industrial dispute exists and that a fair and proper enquiry was conducted. On merits the date of appointment of the claimant is admitted. It is further alleged that his service

record was not good. Many charge-sheets were issued to him. It is contended that the workman committed acts of gross misconduct. His explanation was not found satisfactory. Hence domestic enquiry was conducted. He appeared in the proceedings, but he always walked out from the proceedings after appending his signatures on the enquiry proceedings. The workman's demand to be represented by an outsider was not justified as the representative of the management was also not a legally trained person. Hence according to the provisions of Certified Standing Orders, the request of the workman to be represented by an outsider was turned down. He was allowed to be represented by a co-workman of his choice but the workman insisted for an outsider. The proceedings were rightly conducted *ex parte* on 1st February, 1985 as the workman walked out from the enquiry room. He was found guilty of the charges. He was issued a Show-Cause Notice on 20th February, 1985. The reply of the workman was not found satisfactory. Hence he was dismissed from service on 30th March, 1985. It is prayed that if the Hon'ble Court do not find the enquiry fair and proper then an opportunity to lead an additional evidence may be given.

In the rejoinder the workman has denied the everments raised by the management. The parties contested the reference on the following issues:—

- (1) Whether the domestic enquiry is fair and proper ?
- (2) As per reference ?

I have heard the authorised representatives of both the parties and have gone through the evidence on record. My findings on the issues seriatim are as under :—

ISSUE NO. 1:

The contention of the workman is that the workman was not allowed to be represented by an Advocate. The contention of the management is that according to the Certified Standing Orders of the company, the workman can be

represented only by co-workman of his choice. The representative of the workman has relied upon the judgement of Hon'ble Bombay High Court between Ghatge Patil Transport, Pvt. Ltd., and B. K. Etale and others; 1984-II-LLJ, page 121. It is held that "In domestic enquiries, if the employee is refused a fair opportunity of putting forward his case, his request for being represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect. However, this will depend on the facts and circumstances of each case." The judgement of Hon'ble Supreme Court in the Board of Trustees of the Port of Bombay vs. Dilip Kumar has been cited. In the above-said cases the management was represented by a legally trained mind and the workman was denied the opportunity of being represented by a legally trained person. In the present case the Personnel Officer of the Company was not a legally trained person. According to clause 24(d) of the Certified Standing Orders of the respondent-company, the workman can seek assistance of another workman of his choice. It is, therefore, clear that his demand to be represented by an Advocate was rightly turned down.

The next contention of the representative of workman is that the charges framed are vague and he was not bound to reply the vague charges and the enquiry be vitiated. He has relied upon the judgement of Hon'ble Supreme Court between Northern Railway Co-operative Credit Society, Ltd., and Industrial Tribunal, Jaipur, 1967 II-LLJ, page 46. To appreciate the judgement of Hon'ble Supreme Court it is necessary to reproduce the charges levelled against the workman. In charge-sheet, Exhibit M-2, the first charge is that on 16th December, 1984 during duty hours from 8.30 a.m. to 5.00 p.m. at 2.00 p.m. he left his place of work and went to the threading machine and quarreled with the workers of contractor, Shri Baz Singh. He asked them to stop work otherwise he will see them outside the factory gate. The second charge is in the meantime Supervisor reached there and asked him to return to his machine and work. At this the workman flew a raise and said he will form a

union of the workers. IIIrd charge is that on 20th December, 1984, he came on duty at 10.00 p.m. he left his place of work and went to the threading machine where employees of the contractor were working. He asked them to run away otherwise he would smash their heads. Only that person would work whom he would like. The fourth charge is that supervisor and the incharge reached at the spot and advised the worker to do his work. The worker replied that he had seen many such persons like Supervisor. Only that person would work as he wished. The 5th charge is that he willingly and knowingly broken the shaft of the threading machine due to which loss of Rs. 300 was suffered and production of Rs. 3,000 was affected. The reply of the workman is, Ex. M-3. In this reply the workman has not said that the charges were vague. In the judgement cited by the representative of the workman, the charges Nos. 1, 3, 4 and 5 were said to be vague. In his reply the workman had said that the charges were vague. In the show-cause notice also the workman had asked that the charges were vague. The first charge was that on 20th April, 1956 he collectively submitted sick certificates. The 3rd charge was that he took active part in the issue and distribution of certain leaflets issued against the management of the society. The 4th charge was of carrying vilifying propaganda in connection with the election of the society, 5th charge is instigating the depositors to withdraw their deposits from the society and thus undermining the very existence of the institution". It was held that the charges did not mention whom he had instigated or with whom he had conspired and how this conspiracy was inferred. Regarding the leaflets it is held that the charge-sheet did not at all indicate what those leaflets were and what part the Kanraj had taken. As regards the 4th charge it was held that there was no specification as to the persons with whom this propaganda was carried on by Kanraj and where and when it was done. Regarding the fifth charge there was no mention as to which depositors had been instigated. In the present case all the charges are clear. The time date and the name of the person had been mentioned. It had been clearly mentioned that he mis-

behaved with the supervisor and the incharge. It is clearly mentioned that the shaft of threading machine was broken. I think, there was no vague charges were framed against the workman. Moreover the workman has never written that the charges were vague. Hence the enquiry is not vitiated that the charges were vague. The next contention of the representative of the workman is that the Chief Executive who dismissed the workman was not competent to dismiss him. He had relied upon the judgement of Hon'ble Supreme Court of India between Hindustan Brown Boveri Ltd., and their workmen and another: 1968-I-LLJ, page 571. In this case according to Standing Order 27 of the company, dismissal powers were reserved with the company. It was held that Works Manager had no power to dismiss the workman. In the present case, it is contended that according to Clause 1-(c) of the Standing Order of the company, only the manager could dismiss the workman. This contention of the representative of the workman has no force. Manager also includes any other officer directing supervising and controlling the establishment of the factory in the absence of the manager. Moreover in the present case, the workman who dismissed the workman was chief executive. He was certainly not below the rank of the manager. Hence he was competent to issue the charge-sheet and dismiss the workman. The next contention of the representative of the workman is that the workman was always escorted by a gunman and was turned out from the enquiry proceedings. It has not been stated in the claim statement or the demand notice that he was always escorted by a gunman in the enquiry proceedings. Moreover the workman has not produced any evidence that he was turned out from the enquiry proceedings. His bare statement remains uncorroborated. No fault has been found in the enquiry report. I have considered the enquiry file. The enquiry officer had recorded the statement of MW-1 Shri A. S. Pandey, MW-2 Shri Hari Parshad, MW-3 Shri D. S. Nair and MW-4 Shri J. S. Gupta. The enquiry was based on the evidence produced in the enquiry proceedings. I, therefore, find that the

enquiry was fair and proper. This issue is decided in favour of the management.

under Section 15 of the Industrial Disputes Act.

ISSUE NO. II:

The contention of the representative of the workman is that mere using threatening language does not mean such mis-conduct that the workman should be dismissed. He had relied upon the judgement of Hon'ble Supreme Court of India between Rama Kant Mishra and State of Uttar Pradesh and others; 1983—S.C. cases (L. & N) page 26. It is held that punishment must be proportionate to the misconduct. Facts and circumstances of the case must justify dismissal. Dismissal for use of indiscreet, indecent or threatening language to superior only once in the course of long unblemished service, held disproportionately excessive, withholding of two increments was held to be proper punishment.

In the present case, the charge of break of shaft worth Rs. 300 and causing production loss of Rs. 3,000 is certainly a major previous mis-conduct. He had misbehaved with the Supervisor not on one occasion, but on two occasions. He had also prevented the workers of Shri Baz Singh, Contractor, not to work in the factory premises. This cannot be said merely un-cultured behaviour but the workman tried to prevent the other workers from doing their duty. Hence it also amounted to major mis-conduct. I, therefore, find that the punishment of dismissal was proper and justified. He is not entitled to any relief.

The award is given accordingly.

The 14th May, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1317, dated 24th May, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/9/86-6-Lab./5302.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. The Panipat Co-operative Sugar Mills, Limited, Panipat.

BEFORE SHRI R. N. BATRA,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
Reference No. 387/1981
between

THE MANAGEMENT OF M/S. THE PANIPAT CO-OPERATIVE SUGAR MILLS, LIMITED, PANIPAT AND ITS WORKMEN, GENERAL SECRETARY, SUGAR MILLS MAZDOOR SANGH

OFFICE, 623/9, PANIPAT

Present:

Shri N. R. Munjal, for the workmen.

Shri R. S. Malik, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following disputes between the management of M/s. The Panipat Co-operative Sugar Mills Limited, Panipat, and its workmen, to this Tribunal for adjudication :—

- (1) Whether the workers are entitled to enjoy sick leave for one day without the medical certificate from Doctor ? If so, with what details?
- (2) Whether the person working on seasonal vacant post be absorbed in the said post ? If so, with what details ?

(3) Whether the person working on feeder of sugarcane be made permanent ? If so, with what details ?

2. Notices were issued to both the parties. In the claim statement, dated 4th June, 1982, it was alleged that the workers should be entitled to enjoy sick leave for one day without medical certificate from the Doctor. It was further alleged that the persons mentioned in annexure A were working in different departments of the respondent Sugar Mills on different posts for the last 5 to 8 seasons, but they were not being given facilities, which were available to the seasonal/permanent workers of the respondent Mills. It was also alleged that the persons mentioned in annexure-B were working on Feeder of the Sugarcane since 1974-75 which job was of a seasonal nature, but they were being deprived of the facilities which were being given to seasonal/permanent workers.

3. The management in their written statement, dated 12th July, 1982 pleaded that according to Standing Orders of the Mills, there was no provision that sick leave be granted only on the recommendation of the Medical Officer, but the workman will have to produce medical certificate, if so demanded by the management. It was further pleaded that the persons named in annexure-A were not regular workmen of the Mills, but, on the other hand, they were casual workers and used to be called for duties off and on as per exigencies of the work and job and that the Board of Directors constituted a sub-committee to review the strength of workers in each department. It was further pleaded that after interview and on the basis of their experience and merits, the persons mentioned at serial No. 1 to 4 and 6 to 9 of Annexure-A were made seasonal permanent employees of the Mills. It was further pleaded that according to approved strength of the Mills there was no permanent or seasonal post on the cane carrier for unloading cane and that the said job was not a part of the manufacturing process.

4. The claimants in their rejoinder, dated 16th September, 1984 reiterated the pleas taken in the claim statement,

5. On the pleadings of the parties, the following issues were framed on 16th October, 1982:—

(1) Whether the workers are entitled to enjoy sick leave for one day without the medical certificate from Doctor ? If so, with what details ? OPA.

(2) Whether the person working on seasonal vacant post be absorbed in the said post ? If so, with what details ? OPA

(3) Whether the person working on feeder of Sugarcane be made permanent ? If so, with what details ? OPA.

6. It may be mentioned that the management has examined one witness and documents, Exhibits M-1 to M-5, have been tendered into evidence. The workman have examined 9 witnesses and the documents, Exhibit W-1 to W-7 have been tendered into evidence. After going through the entire evidence and hearing the representatives both the parties, my findings on the above issues are as under :—

ISSUE NO. 1:

7. This issue was conceded by the representative of the management because it was stated that,—vide settlement, Exhibit M-4, dated 3rd June, 1985, this demand of the workman had been accepted by the management. In this document, it is recited that henceforth one day's medical leave shall be allowed to the workmen without producing the medical certificate from the Doctor. The issue is decided accordingly in favour of the workmen.

ISSUE NO. 2:

8. The workmen have examined WW-1 Shri Jagga, who stated that he was working as Boiler Coolie since 1977 in the respondent Mills as a seasonal workman. He further stated that he used to come at the time of starting of the season and went back when the crushing season came to an end. He further stated that there were four boilers in the respondent Mills and that four coolies worked on

each boiler. He further stated that there were four shifts in the Mills and that 16 coolies used to work on each job. He further stated that he was working against the seasonal vacant post and that he should be given facilities, which were enjoyed by seasonal/permanent employees. WW-2 Shri Mahabir, Boiler Coolie and WW-3 Shri Randhir, Boiler Coolie made similar statements. WW-4 Shri Lakhi stated that he was working as Khalasi in the respondent Mills for the last 7 years and that he used to come at the time of start of the season and went back when the season was off. He further stated that he was working against a seasonal post and that all the facilities which were available to a seasonal workman should be given to him.

9. The management, on the other hand, examined MW-1 Shri Hem Raj, Senior Time Keeper, who stated that the claimants whose names were mentioned in annexure-A (Exhibit W-1) were casual/daily rated workers. He further stated that these workers were appointed against seasonal/permanent posts on the basis of seniority cum-merit by the Selection Committee after interviewing them. He further stated that out of workers mentioned in the list, Exhibit M-1, the persons at serial Nos. 1 to 4 and 7 to 9 were made seasonal/permanent workers after holding the interview. He further stated that the casual/daily rated workers were taken on duty if they themselves came for duty and that no notice was sent to them which was however necessary for season/permanent workers only.

10. A perusal of the above evidence would show that the claimants' plea is that they were working against seasonal/permanent posts while the case of the management-respondent is that the workers named in Annexure-A (Exhibit W-1) are daily rated/casual workers. WW-1 Shri Jagga, WW-2 Shri Mahabir, WW-3 Shri Randhir and WW-4 Shri Lakhi admitted in cross-examination that no appointment letter was given to them and that no notice was sent to them when crushing season started. Exhibit W-2 is the list of some workers, which

shows that they worked in the Sugar Mills during the years 1978-79 to 1981-82. The total number of their working days are given in this statement and the period of crushing is also given in the statement. This statement shows that some of the claimants are working in the respondent Mills for the last 4 seasons, as mentioned above. There is, however, no evidence from the side of the workmen that they were appointed against sanctioned posts of seasonal/permanent workmen. The total strength in different departments is given in the document, Exhibit M-5. The total strength of permanent/seasonal employees for each department is given in this document. It was for the claimants to prove that they worked against seasonal/permanent post during the crushing season during the years 1978-79 to 1981-82, which they have failed to prove. Their evidence goes to show that they worked as daily rated/casual workers during the crushing season for the years 1978-79 to 1981-82. The document, Exhibit W-4 shows that some daily rated workers were appointed as seasonal/permanent workers on the basis of the seniority-cum-merits by the Selection Committee. MW-1 Shri Hem Raj stated that out of persons named in Annexure-A (Exhibit W-1), the persons at serial Nos. 1 to 4 and 6 to 9 were made seasonal/permanent after interview. In the ruling reported as *Dhirendra Chamoli and another and State of U.P. 1986 (52) F.L.R.*, page 147, it is laid down that salary, etc., of the daily rated workers and regular Class IV employees, who performed similar duty should be the same. It is thus clear that daily rated/casual workers have a right to be considered for the posts of seasonal/permanent workmen as and when the same fall vacant and the Selection Committee can appoint them on the basis of seniority-cum-merit. It is thus held that daily/casual workers working in different departments have a right to be considered, while filling up the vacant posts of permanent/seasonal workmen by the Selection Committee on the basis of seniority-cum-merit. This issue is decided accordingly in favour of the workmen.

ISSUE NO. 3:

11. The claimants have examined WW-5 Shri Puran, who stated that he was working on the Feeder of Sugarcane for the last 6/7 years but no retaining allowance was being given to him. MW-6 Shri Ishwar and MW-7 Shri Rajpal made similar statements. In cross-examination, these witnesses admitted that no appointment letter was issued to them and that no notice was being received from the Mills when the crushing season started. MW-1 Shri Hem Raj, Senior Time Keeper stated that no seasonal/permanent post was sanctioned in the Cane Carrier Department and that some workers used to work as casual/daily rated workers on the cane feeder. The names of the persons working on the Cane Feeder are given in Annexure-B of the Demand Notice. WW-8 Shri Daya Krishan, Time Keeper, Haryana Co-operative Sugar Mills, Rohtak, stated that 14 workers were employed on the Cane Feeder and they had been made seasonal/permanent. In cross-examination, he admitted that there was no sanctioned strength of seasonal/permanent workmen for the Cane Feeding Section, but they had appointed the labour working on Cane Feeder on seasonal/permanent posts against manufacturing department. Exhibit M-5 is the document showing the strength of the Sugar Mills at Panipat. It is recited in this document that 42 persons can work as cane carrier labour on daily wages. The strength of seasonal/permanent workers of manufacturing department has been described as 8 and 382 workers, respectively. If the workers employed on the Cane Feeder in Sugar Mills at Rohtak can be appointed against permanent/seasonal posts of manufacturing Department by the Selection Committee on the basis of seniority-cum-merits, there should be no hitch in considering the cases of daily rated/casual workers working on Cane Feeder of Sugar Mills, Panipat by the Selection Committee, when vacant posts of seasonal/permanent workers in Manufacturing Department or any other Department are being filled after holding interview. It is thus held that the persons working on Feeder of

Sugarcane can be considered for vacant seasonal/permanent posts in Manufacturing Department or any other Department by the Selection Committee on the basis of senior-cum-merit, as mentioned above. The issue is decided accordingly in favour of the workmen.

12. In view of the foregoing discussion, it is held that the workers are entitled to enjoy sick leave for one day without medical certificate from the Doctor. It is further held that the daily rated/casual workers working in different Departments have a right to be considered while filling up vacant posts of permanent/seasonal workmen by Selection Committee on the basis of seniority-cum-merit. It is further held that the daily rated/casual workers working on the feeder of Sugar Cane are also entitled to be considered for the vacant posts of seasonal/permanent workmen of Manufacturing Department or any other Department by the Selection Committee on the basis of merit-cum-seniority as mentioned above. The award is passed accordingly.

The 5th June, 1985.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 373, dated 5th June, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.